

ELIZABETH B. WYDRA (BAR No. 218200)
BRIANNE J. GOROD
BRIAN R. FRAZELLE
CONSTITUTIONAL ACCOUNTABILITY CENTER
1200 18th Street NW, Suite 501
Washington, D.C. 20036
(202) 296-6889
elizabeth@theusconstitution.org

Counsel for Amicus Curiae

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

IMMIGRANT LEGAL RESOURCE CENTER;
EAST BAY SANCTUARY COVENANT;
COALITION FOR HUMANE IMMIGRANT
RIGHTS; CATHOLIC LEGAL
IMMIGRATION NETWORK, INC.;
INTERNATIONAL RESCUE COMMITTEE;
ONEAMERICA; ASIAN COUNSELING AND
REFERRAL SERVICE; ILLINOIS
COALITION FOR IMMIGRANT AND
REFUGEE RIGHTS,

Plaintiffs,

v.

CHAD F. WOLF, *under the title of Acting
Secretary of Homeland Security*; U.S.
DEPARTMENT OF HOMELAND
SECURITY; KENNETH T. CUCCINELLI,
*under the title of Senior Official Performing the
Duties of the Deputy Secretary of Homeland
Security*; U.S. CITIZENSHIP &
IMMIGRATION SERVICES,

Defendants.

Case No. 4:20-cv-05883-JSW

**MOTION OF CONSTITUTIONAL
ACCOUNTABILITY CENTER TO
EXCEED PAGE LIMITATIONS**

Date: October 9, 2020

Time: 9:00 a.m.

Place: Courtroom 5, 2nd Floor

Judge: Honorable Jeffrey S. White

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT Constitutional Accountability Center (CAC), which
3 intends to file an *amicus curiae* brief in support of Plaintiffs' motion for a preliminary injunction
4 in the above-captioned case, hereby moves for leave to exceed the page limit governing such
5 briefs under this Court's Civil Standing Orders. Plaintiffs consent to this request. Defendants do
6 not oppose CAC's submission of an *amicus curiae* brief, and they take no position on CAC's
7 request for an enlargement of pages. In support of this motion, *amicus* states:
8

9 1. CAC is a think tank, public interest law firm, and action center dedicated to
10 fulfilling the progressive promise of our Constitution's text and history. CAC has a strong
11 interest in preserving the checks and balances set out in our nation's charter, as well as the proper
12 interpretation of laws that help maintain that balance. Accordingly, CAC has participated as
13 counsel and as *amicus curiae* in numerous cases involving the Constitution's Appointments
14 Clause and the Federal Vacancies Reform Act of 1998 (FVRA).
15

16 2. This Court's Scheduling Order of August 28, 2020, permits *amici curiae* to file
17 responses to Plaintiffs' motion for a preliminary injunction by 12:00 p.m. on September 9, 2020.
18 Under this Court's Civil Standing Orders, briefs in support of a motion for a preliminary
19 injunction may not exceed 15 pages in length. CAC requests permission to exceed this 15-page
20 limit for its anticipated *amicus* brief, and to instead file a brief not exceeding 23 pages in length.
21

22 3. *Amicus* makes this request because Plaintiffs' challenge to the validity of Chad
23 Wolf's tenure as Acting Secretary of Homeland Security raises questions about the proper
24 interpretation of three complex statutes and the interrelationship among them—the FVRA, the
25 Homeland Security Act, and the Administrative Procedure Act. These questions include not
26 only whether a statutory violation has occurred but also, if so, the proper remedy for that
27
28

violation. In addition, answering some of these questions requires construing a series of orders and administrative documents issued by officials within the Department of Homeland Security. Moreover, the statutory questions raised here have significant implications under the Appointments Clause of the U.S. Constitution, and the question whether Chad Wolf has been lawfully serving as Acting Secretary of Homeland Security has practical ramifications beyond the Final Rule that Plaintiffs are challenging in this suit.

4. Accordingly, CAC's proposed *amicus* brief describes the history, structure, and purpose of the FVRA, and it discusses how the FVRA interacts with the Homeland Security Act and the Administrative Procedure Act. The brief also explains in detail the two independent reasons that Chad Wolf's tenure as Acting Secretary of Homeland Security violates the FVRA. In doing so, the brief responds to specific arguments that the government has elsewhere advanced in defense of Mr. Wolf's tenure. Under this Court's Scheduling Order, Defendants will have an opportunity to respond to the arguments presented by CAC as *amicus curiae*.

For the foregoing reasons, CAC respectfully requests that this Court grant leave to file an *amicus* brief not to exceed 23 pages in length. A proposed order is attached to this motion.

Dated: September 3, 2020

Respectfully submitted,

Elizabeth B. Wydra

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CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2020, the foregoing document was filed with the Clerk of the Court, using the CM/ECF system, causing it to be served on all counsel of record.

Dated: September 3, 2020

Elizabeth B. Wydra
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